IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

:: JUDGMENT ::

The United India Insurance Co. Ltd. Vs. Narayan Singh & Anr.

S.B. CIVIL MISC. APPEAL NO.1857/2007.

Against the award dated 04.03.2005 made by the Motor Accidents Claims Tribunal-I, Jodhpur in Claim Case No.356/2003.

Date of Judgment :::: 7th August 2007.

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Manoj Bhandari with
Mr. Sushil Bishnoi, for the appellant.
Mr. S.K. Sankhla for
Mr. Rajesh Panwar, for the respondent No.1.

...

BY THE COURT:

This appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act'/'the Act of 1988' hereafter) has been preferred by the insurer of the motorcycle bearing registration No. RJ19 16M 5896 being aggrieved of the award dated 04.03.2005 made by the Motor Accidents Claims Tribunal-I, Jodhpur in Claim Case No.356/2003.

By the award impugned, the Tribunal has allowed the claim application under Section 163-A of the Act made by the

vehicular accident victim Narayan Singh (about 40 years); and has awarded compensation in the sum of Rs.1,24,086/- together with interest @ 9% per annum from the date of filing of claim application for the loss suffered by him due to the injuries sustained in accident. The insurer essentially seeks to question the very competence of the claim application for the reason that the claimant Narayan Singh himself was the driver of the insured vehicle; and, according to the appellant, liability in his relation is not covered under the 'Act only' policy.

Background facts are that on 01.08.2003, the claimant made the claim application under Section 163-A of the Act with the submissions that on 14.10.2002 in the city of Jodhpur he has gone on the aforesaid motorcycle bearing registration No. RJ19 16M 5896 belonging to the non-applicant No.2 to the S.P. Office for morning report; that after delivering the report when he reached on the main road towards Rai-ka-Bag from Police Lines, a military truck hit him from behind and sped away; that he fell down with motorcycle and sustained several injuries that resulted in permanent disablement. While stating his disablement at 7.36%, his salary at Rs.4,000/- per month as Police Constable, and age at 40 years, the claimant made the claim for compensation against the registered owner of the motorcycle, the non-applicant No.1; and its insurer, the non-applicant No.2 (the present appellant).

The claimant sought compensation in the sum of Rs.67,160/- while claiming Rs.5,000/- towards one grievous injury, another Rs.5,000/- towards five simple injuries, Rs.13,000/- towards treatment expenditure and future likely expenditure, and Rs.44,160/- towards 7.36% permanent disablement, after taking annual income at Rs.40,000/- and applying multiplier of 15.

The non-applicant No.1, owner of the vehicle, submitted a reply of the general admission of the claim averments but alleged liability in the insurer. The insurer, non-applicant No.2, while stating general denial of the claim averments submitted that the accident occurred due to the fault and negligence of the claimant himself; that the vehicle was not being driven by a valid licence holder; that the vehicle was not being driven for the purposes of and at the instructions of its owner; that the risk in relation to the driver was not covered under the policy in question; and that when according to the claimant, other vehicle had run away after hitting, he could make a claim under 'hit and run' provisions and not under Section 163-A of the Act.

On the pleadings of the parties, the Tribunal framed the following issues for determination of the relevant questions involved in the case:-

(1) आया प्रश्नगत वाहन मो. साईकल संख्या - RJ 19 – 16M – 5896 के उपयोग से द्वारा दिनांक 14.10.02 को सुबह पुलिस लाईन से राई का बाग जाने वाले आम रास्ते पर जोधपुर में उक्त वाहन को चलाकर की गई दुघर्टना में प्रार्थी के चोटें आई

(2) आया उक्त वाहन चालक तब उक्त वाहन स्वामी विपक्षी संख्या - एक के नियोजन मे होकर उसी के हितार्थ एवं लाभार्थ कार्य नहीं कर रहा था

(3) आया विपक्षी संख्या - दो बीमा कम्पनी द्वारा अपने लिखित कथन की प्रारम्भिक आपत्तियों एवं विशेष कथन के मददेनजर चालक के पास वैध एवं प्रभावी अनुज्ञापत्र के अभाव में बीमा कम्पनी अपने दायित्व से मुक्त हो सकती है नहीं तो इसका प्रभाव

(4) आया दावेदार अपने दावे / दावों में अंकित प्रश्नगत् राशि या अन्य कोई न्याय सम्मत् राशि पा सकते है, हां तो कौन कौन दावेदार कितनी कितनी राशि, किस किस विपक्षी से एवं किस प्रकार से पा सकते है ।"

The claimant examined Dr. Mahesh Bhati, PW-1 in proof of his disablement certificate Ex.1; and examined himself as PW-2; and produced relevant documentary evidence. The non-applicants did not lead any evidence but the insurance policy was produced as Ex.A/1.

After hearing the parties, the Tribunal decided issue No.1 in favour of the claimant with the observations that the claim for compensation was made under Section 163-A of the Act that was based on the principles of no-fault liability and no any negligence on the part of the driver or any other person

was required to be proved and it was sufficient if any person suffered loss for the use of a motor vehicle; and in the present case it was proved that the accident occurred for and during the use of the motorcycle in question. The Tribunal observed that according to the appellant he was hit from behind by a military vehicle but such aspect did not require dilatation for the claim being made under Section 163-A of the Act. The Tribunal, therefore, held the non-applicants liable for compensation. The Tribunal further decided issue No.2 against the insurer for want of relevant evidence. In issue No.3, a wholly baseless argument was advanced on behalf of the insurer that the claim application under Section 163-A of the Act was not maintainable because the said provision was inserted in the Act of 1988 by way of Amendment Act No.54 of 1994 and the said Amendment Act itself has been repealed by the Repealing and Amending Act, 2001 (Act No.30 of 2001) and, therefore, Section 163-A does not exist at all. The learned Tribunal rejected the said argument as being entirely baseless for the repealed enactment having already been applied and incorporated in the principal Act.

Taking up quantification of compensation in issue No.4, the Tribunal referred to the oral and documentary evidence on record and taking the net income of the claimant at Rs.6,375/- per month, i.e. Rs.76,500/- per annum; and with application of

multiplier of 16 to the factor of 7.36% permanent disablement, assessed pecuniary loss at Rs.90,086/-. The Tribunal further allowed Rs.4,000/- towards four simple injuries, Rs.5,000/- towards one grievous injury and Rs.7,000/- towards treatment expenditure with reference to the bills Ex.9 to Ex.15 totalling to Rs.6,726.70. The Tribunal further allowed Rs.17,000/- towards loss of income for two months and Rs.1,000/- towards property damage and in this manner assessed total loss in the sum of Rs.1,24,086/- (90,086/- + 4,000/- + 5,000/- + 7,000/- + 17,000/- + 1,000/-); and while making award of compensation in this amount, allowed interest @ 9% per annum from the date of filing of claim application.

Aggrieved by the award aforesaid, the insurer has preferred this appeal taking the grounds that Section 163-A cannot be said to be existing in the statute book after the Repealing and Amending Act of 2001 whereby the Amending Act No.54 of 1994 has been repealed and, therefore, the claim application under Section 163-A was not maintainable; that the finding on issue No.2 is wholly incorrect for the claimant being in Government employment and he cannot be said to be in the employment of the respondent No.2 and driving the vehicle for the owner for his benefit; that the claimant has failed to prove that he was possessing a valid driving licence; that he has not produced any evidence to show that he had not received

medical reimbursement of the expenses incurred; that he has failed to show any disablement and loss of income; that his monthly income has been shown at Rs.8,500/- per month which comes to Rs.1,02,000/- per annum and, therefore, claim for compensation under Section 163-A of the Act was not competent because the said provision was enacted in order to extend relief in relation to the persons having income less than Rs.40,000/- per annum; that the amount awarded by the Tribunal remains highly excessive and the interest has also been awarded at an excessive rate of 9% per annum. Though not distinctly set out in the memo of appeal, it has been attempted to be urged during the course of submissions that claim for compensation under Section 163-A was not competent for the reason that the victim was the driver of the vehicle; and was not covered under the policy in question.

22 days' delay in filing the appeal was condoned on 26.07.2007 and the matter was placed for admission; but, with the claimant having appeared and in view of the decisions already rendered by this Court in relation to the matters involving akin issues regarding competence of the claim application under Section 163-A of the Act, and having regard to the overall facts and circumstances, this appeal has been finally heard at this stage.

While supporting the award in question, learned counsel Mr. S.K. Sankhla appearing for the respondent-claimant submitted that though the competence of the claim application under Section 163-A of the Act of 1988 is sought to be questioned in this appeal by the appellant-insurer with the contentions that the victim himself was the driver of the vehicle in question, and that the 'Act only' policy issued by the insurer was not of coverage of the risk in relation to the driver of the vehicle concerned; however, such questions stand concluded against the insurer for the view taken by this Court in the case of United India Insurance Co. Ltd. Vs. Smt. Rekha & Ors. (S.B. Civil Misc. Appeal No.1824/2006 decided on 19.03.2007). Learned counsel for the appellant insurer though submitted that essentially the insurer contends against the competence of this claim application under Section 163-A of the Act for the victim himself being the driver of the vehicle and his risk being not covered under the policy in question; but frankly admitted that this Court in the aforesaid case of Smt. Rekha has ruled against the insurer on these questions. However, learned counsel submitted that even with reference to Section 163-A of Act, the award in question remains excessive particularly when the Tribunal has assessed loss relating to disablement while taking annual income of the victim at Rs.76,500/-; and when the Tribunal has allowed further

component of two months' loss of income without justification.

Having given anxious consideration to the submissions, this Court is clearly of opinion that the arguments concerning maintainability of the proceedings must be rejected but the quantum of compensation awarded deserves modification.

In the aforesaid case of Smt. Rekha, the victim was driving a motorcycle of the ownership of his father; and the mother, wife and the minor child of the victim sought compensation under Section 163-A of the Act for the reason that the death of the victim resulted from an accident arising out of the use of the said motorcycle. The Tribunal allowed the claim application and awarded compensation under Section 163-A of the Act. It was argued on behalf of the insurer that the deceased did not answer to the description of 'third party' for the purpose of coverage under the insurance policy in question and, therefore, the Tribunal had been in error in making the award of compensation against the insurer; and that there was no requirement under the statute to cover the risk of a driver of the motor vehicle. It was also argued that the deceased was himself negligent and was responsible for the accident and that Section 163-A of the Act cannot be interpreted in the manner that compensation would be awarded even for the negligence of the victim himself.

This Court negatived the contentions aforesaid after examining the special provisions of Sections 163-A and 163-B of the Act of 1988, the provisions of Sections 140, 147 and 149 of the Act, the scheme of insertion of Sections 163-A and 163-B by the Amendment Act No.54 of 1994 in Chapter XI of the Act of 1988 and simultaneous amendment to Section 149 (1) of Act of 1988, and the over-riding effect of the newly inserted Section 163-A; and after referring to the decisions dealing with the subject, including those of the Hon'ble Apex Court in Oriental Insurance Co. Ltd. Vs. Hansrajbhai V. Kodala : 2001 ACJ 827 (SC); and Deepal Girishbhai Soni & Ors. Vs. United India Insurance Co. Ltd : (2004) 5 SCC 385. This Court has particularly noticed the following observations of the Hon'ble Supreme Court in Deepal Girishbhai Soni's case :-

> "66. We may notice that Section 167 of the Act provides that where death of, or bodily injury to, any person gives rise to claim of compensation under the Act and also under the Workmen's Compensation Act, 1923, he cannot claim compensation under both the Acts. The Motor Vehicles Act contains different expressions as, for example, "under the provision of the Act", "provisions of this Act", "under any other provisions of this Act" or "any other law or otherwise". In Section 163-A, the expression "notwithstanding anything contained in this Act or in any other law for the time being in force" has been used, which goes to show that Parliament intended to insert a non obstante clause of wide nature which would mean that the provisions of Section 163-A would apply despite the

> contrary provisions existing in the said Act or any other law for the time being in force. Section 163-A of the Act covers cases where even negligence is on the part of the victim. It is by way of an exception to Section 166 and the concept of social justice has been duly taken care of."
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> (emphasis supplied)

This Court, then, pointed out in the case of Smt. Rekha (supra),-

> "Thus, it is clear that the scheme of Section 163-A of the Act has come on its fuller exposition by the Hon'ble Supreme Court in the cases of Hansrajbhai V. Kodala and Deepal Girishbhai Soni and there remains no doubt with these pronouncements that Section 163-A of the Act covers the cases where the negligence is on the part of the victim himself."

And, this Court expressed the opinion thus :

> "This court is of opinion that in the context of the decision in Deepal Girishbhai Soni's case (supra), the observations of the Hon'ble Supreme Court in paragraph 66 as noted above cannot be termed as mere obiter dictum. As noticed above, the matter was referred to the Larger Bench of the Hon'ble Supreme Court for the reason that correctness of the decision of Hansrajbhai V. Kodala was doubted and then the entire scheme of Section 163-A of the Act was before the Hon'ble Supreme Court for interpretation in order to rule on its true and correct operation. This Court is clearly of opinion that in view of the decision of the Hon'ble Supreme Court in Deepal Girishbhai Soni's case, the law is required to be taken as well settled that Section 163-A

> of the Act covers the cases even where the negligence is on the part of the victim and that provisions of Section 163-A of the Act have their effect overriding other provisions of the Act."

In Smt. Rekha's case, this Court has also considered the submissions that there is no requirement of compulsory coverage of the driver of the vehicle and rejected the same in the context of Section 163-A of the Act while observing,-

> "The other limb of submission of the learned counsel for the appellant-insurer has been that the victim himself was the driver of the motorcycle and, being not compulsorily required to be covered under Section 147 of the Act, risk in his relation was not covered under the insurance policy and hence, the Tribunal has been in error in fastening the liability on the appellant. The submission on its face appears wee bit attractive but turns out to be hollow and baseless.
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> A close look at the provisions of Section 163-A of the Act makes it clear that the said provision overrides every other provision of the Act and, as pointed by the Hon'ble Supreme Court, is a Code in itself; and it operates notwithstanding anything contained in the Act or in any other law for the time being in force or any instrument having the force of law. Under the said provision, owner of the motor vehicle and its authorised insurer have been made liable to pay compensation for the loss (for death or permanent disablement) arising out of use of motor vehicle; and the amount of such compensation has been quantified in the Second Schedule appended to the Act. The submission as made by the learned counsel for the appellant-insurer with reference to Section 147 of the Act is required to be

> rejected for the fundamental reason that in the present case, claim for compensation has been dealt with under Section 163-A of the Act and NOT under Section 166 of the Act. Once, it is clear that Section 163-A of the Act overrides every provision of the Act itself, it necessarily follows that it overrides even Section 147 of the Act. The submission that compulsory coverage under Section 147 of the Act is only in relation to certain classes of persons and that the driver of the vehicle, and for that matter a passenger, is not required to be covered and he does not answer to 'third party' are all fundamentally irrelevant for the reason that the liability of the authorised insurer under Section 163-A stands notwithstanding anything contained in the Act; obviously notwithstanding anything contained in Section 147 either."

This Court further pointed out incorrectness of the argument regarding limited coverage as made only with reference to Section 147 of Act; and, while referring to the significant amendment of Section 149 (1) of Act simultaneous with insertion of Section 163-A, this Court observed,-

> "The peculiar aspect that Section 147 of the Act as such limiting the coverage would not be applicable for the purpose of Section 163-A of the Act could be readily noticed from sub-section (1) of Section 149 of the Act. Under the said provision when a certificate of insurance has been issued under Section 147(3) of the Act in favour of the person by whom a policy has been effected and a judgment or award is obtained against a person insured with the policy, the insurer has been made liable as a judgment-debtor for the liability together with the amount of interest. And, the liability concerned has been distinctly stated: (i) "as is required to be covered by a policy under

clause (b) of sub-section (1) of Section 147 (being a liability covered by the terms of the policy)"; or (ii) "under the provisions of Section 163-A.

It is absolutely clear that while inserting Section 163-A in the Motor Vehicles Act, 1988, the legislature has taken care of making it meaningfully clear and unambiguous in its operation by specifying in Section 149 of the Act that the liability under Section 163-A of the Act is separate and distinct from the liability under Section 147(1)(b) of the Act; and the insurer is under an obligation to bear the same.

Only the liability under Section 147(1)(b) of the Act has been referred by the appellant-insurer in support of its contention that the driver was not compulsorily required to be covered under the insurance policy. The argument misses the crux of the matter that the liability under Section 163-A of the Act is distinct from the liability under Section 147 of the Act. It is for this reason that Section 163-A refers to the liability of the owner of the motor vehicle or of the authorised insurer and once the appellant has been the authorised insurer, its liability under Section 163-A, remains and operates alongside, and, if necessary, irrespective, of the provisions of Section 147 of the Act."

This Court has also referred to a Division Bench decision of the Hon'ble Gujarat High Court in the case of New India Assurance Co. Ltd. Vs. Muna Maya Basant : 2001 ACJ 940 and has particularly noticed the following observations:-

> "The insurance company who is the appellant can challenge the claim only on the ground of no contract at all, i.e., no insurance, or on the above-stated grounds. It may be stated that it is not the case of the appellant that the vehicle in question was not insured with it or that the insurance was not in force at the time of accident."

and further that ,-

> "Under the Act, the liability of the insurance company is statutory and that can be spelt out from section 147. Charging extra premium, the insurance company may prefer to cover higher liability or risk or unlimited liability. In any case, therefore, the contractual liability will not be less than the statutory liability. It may be stated that by introduction of section 163-A, the liability as arising thereunder must now be deemed to have been covered under statutory liability regardless of the pecuniary limit in that regard specified in the policy, or premium charged. In other words, the limits of the statutory liability should be deemed to have been extended or enlarged appropriately so as to cover the liability that arises under Section 163-A."
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> (emphasis supplied)

While agreeing with the view expressed by the Hon'ble Gujarat High Court in Muna Maya Basant this Court observed,-

> "When the insurer has undertaken 'Act only' liability, and the enactment itself provides a liability under Section 163-A with much wider non-obstante

> clause, this Court finds itself in agreement with observations of the Hon'ble Gujarat High Court that the insurance company could resist the claim only on the ground of no contract at all. It is noticed from the cover note Ex.5 that the appellant-insurer has proceeded to issue Act only policy and this 'Act only' policy obviously means that statutory liability under the enactment is intended to be covered. It would be a misnomer to suggest the meaning of 'Act only' liability while looking at Section 147 of the Act only, and in the name of 'Act only' policy, the insurer cannot simply forget about Section 163-A of the Act nor could by-pass the requirements of these over-riding provisions. The 'Act only' policy issued by the appellant covers all the liabilities arising under the Act which are required to be taken care of; and when there is a liability in the owner of the vehicle under Section 163-A of the Act, the appellant-insurer is required to indemnify. In the aforesaid view of the matter, this Court is clearly of opinion that the submissions made by the learned counsel for the appellant in relation to non-coverage of risk of the driver cannot be accepted and are, therefore, rejected."

In view of the decisions aforesaid, the arguments sought to be urged on behalf of the appellant against maintainability of the claim application cannot sustain themselves; and deserve to be rejected.

Other grounds suggested in the memo of appeal are fundamentally baseless. The questions as involved in issues Nos. 2 and 3 essentially related to the grounds taken in defence by the insurer; and the insurer having failed to lead

any evidence, issues Nos. 2 and 3 have rightly been decided against it. The ground taken regarding the effect of Repealing and Amending Act of 2001 remains spineless for the repealed enactment having already been applied to the Principal Act of 1988 and the provision in question having already been incorporated in the said Act of 1988.

So far the question regarding quantification of compensation is concerned, of course the Tribunal has been in error in taking the income of the claimant at Rs.6,375/- per month and calculating pecuniary loss on that basis. However, with 7.36% permanent disablement having resulted from the fracture of distal end of left radius as per the certificate Ex.1, the claimant deserves to be allowed compensation taking his annual income maximum at Rs.40,000/- per annum.

It is noticed that the claimant, quite conscious that he was making the claim under Section 163-A of the Act and thus would be entitled to the amount only as admissible under the said provision read with Second Schedule to the Act, made the claim only in the sum of Rs.67,160/-, while claiming Rs.5,000/- towards one grievous injury, Rs.5,000/- towards five simple injuries, Rs.13,000/- towards treatment expenditure and Rs.44,160/- towards 7.36% permanent disablement after putting his annual income at Rs.40,000/- and thus taking the multiplicand at Rs.2,944/- and applying multiplier of 15.

A bare look at the impugned award in relation to quantification of compensation is sufficient to show that the Tribunal, though in the earlier part of the award consciously dealt with the matter under Section 163-A of the Act, but while calculating the amount of compensation totally ignored the requirements of said provision read with Second Schedule to the Act. The Tribunal has proceeded to take annual income of the victim at Rs.76,500/-, then has applied multiplier of 16 and looking to the percentage of disablement, has assessed pecuniary loss at Rs.90,086/-. The assessment so made by the Tribunal towards pecuniary loss is fundamentally incorrect because neither the claimant made any such claim on the basis of his annual income at Rs.76,500/- nor under the Second Schedule to the Act, annual income of the claimant could have been taken beyond Rs.40,000/-, particularly when dealing with the matter under Section 163-A of the Act. Application of multiplier of 16 is also incorrect. The claimant has stated his age at 40 years and himself made the calculation with application of multiplier of 15. It appears that the claimant was above 40 years of age and, therefore, a multiplier of 15 ought to have been applied. Thus, in relation to the loss due to permanent disablement, the claimant is entitled for an amount of Rs.44,160/- as claimed and not beyond. The Tribunal has, of course, rightly allowed Rs.4,000/- towards four

simple injuries and Rs.5,000/- towards one grievous injury and such component of compensation is retained.

In relation to the bills of medical expenditure, the Tribunal has allowed a sum of Rs.7,000/- as against the bills of Rs.6,726.70. Though only actual expenses incurred as supported by the bills/vouchers could be awarded as per Second Schedule to the Act, however, in the circumstances of the case, the proposition of Tribunal in awarding Rs.7,000/- on that score does not appear to be wholly unjustified.

The Tribunal has allowed further an amount of Rs.17,000/- towards loss of two months' leave account and Rs.1,000/- towards property damage. Such component of compensation awarded by the Tribunal cannot be countenanced. Learned counsel for the claimant-respondent has strenuously contended that the claimant is in regular employment and had to remain on leave for two months and thus, loss of leave account being of direct pecuniary loss deserves to be allowed. Apart from the fact that there is no documentary evidence available on record to show the loss, if any, in relation to the leave account so as to quantify in monetary terms, the fact again remains that neither such claim was made by the claimant-respondent before the Tribunal nor is as such envisaged to be granted under the Second Schedule to the Act.

Therefore, the claimant is entitled for compensation in the sum of Rs.60,160/- (44,160/- + 4,000/- + 5,000/- + 7,000/-); and the award of compensation as made by the Tribunal in the sum of Rs. 1,24,086/- cannot be approved and deserves modification.

Though the Tribunal has allowed interest @ 9% per annum and such rate of interest has also been challenged in the present case but looking to the reduction being made in the quantum of compensation in this appeal and to the overall circumstances, this Court is satisfied that no interference is called for in the rate of interest as allowed under the impugned award made in the year 2005.

As a result of the aforesaid, this appeal succeeds and is partly allowed to the extent indicated above and the award of compensation as made by the Tribunal is modified, and instead, the claimant-respondent is awarded compensation in the sum of Rs.60,160/- together with interest @ 9% per annum from the date of filing of the claim application. There shall be no orders as to costs.

It is required to be noticed that the present appeal was filed belatedly by the appellant insurer for the reason that the appellant earlier took a challenge to the validity of Section 163-A of the Act by way of writ petition before the Division Bench of this Court which was ultimately dismissed. While considering

the matter for condonation of delay in filing this appeal and issuing notices on the application moved by the appellant, this Court by the order dated 14.02.2006 noticed that the Division Bench had already passed the order for depositing the amount of award before the Tribunal. This Court, in the circumstances, directed that the amount deposited shall not be disbursed. It has been pointed out during the course of submissions that the appellant insurer had already deposited the cheques for payment of the amount under the award in question before the Tribunal but the same have not been encashed and the validity period of the said cheques has since expired.

Having regard to the circumstances of the case and the modification ordered herein, it is considered appropriate and hence directed that the earlier cheques deposited by the appellant-insurer be cancelled and delivered back, if so required; and the appellant-insurer shall deposit the amount of compensation payable under the modified award together with interest upto the date of depositing of the said cheques before the Tribunal within 30 days from today.

(DINESH MAHESHWARI), J.

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